



## **DEPARTMENT OF COMMERCE**

### **Patent and Trademark Office**

#### **37 CFR Part 1**

**[Docket No. PTO-P-2021-0007]**

**RIN 0651-AD54**

### **USPTO Officially Transitions to Issuing Electronic Patent Grants in 2023**

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is implementing electronic patent issuance to reduce pendency of patent applications, foster a green economy by reducing paper waste, and permit complete issued patents to be viewable and printable by both the applicants as well as the public immediately upon issuance in Patent Center, the USPTO's electronic patent application filing and management system. Patent grants will no longer be issued on paper, and as a result, they will no longer be mailed to the correspondence address of record as part of the patent issuance process. During a transition period, the USPTO will provide a paper copy of the electronic patent grant as a courtesy ceremonial copy, delivered to the patentee's correspondence address of record. After the transition period, a selection of patent grant copies, including the ceremonial copy, will be available for purchase at a nominal charge. The electronic patent grant will be the official statutory patent grant.

**DATES:** This rule is effective on April 18, 2023.

**FOR FURTHER INFORMATION CONTACT:** Matthew Sked, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571-272-7627. For technical questions, contact the Patent Electronic Business Center (EBC) at 1-866-

217-9197 (toll-free), 571-272-4100 (local), or [ebc@uspto.gov](mailto:ebc@uspto.gov). The EBC is open from 6 a.m. to midnight ET, Monday through Friday.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The USPTO will begin issuing and publishing patent grants electronically via the USPTO's electronic patent application filing and management system, Patent Center.<sup>1</sup> By doing so, the USPTO is continuing with its efforts to move to fully electronic processing of patent applications.

One of the specific powers granted to the USPTO by 35 U.S.C. 2(b)(1) is to “adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent ... issued by the Office shall be authenticated.” Currently, the USPTO issues “letters patent” (hereafter, patents) as paper patents under the seal of the USPTO. These paper patents are bound with a cover sheet that has both an embossed seal and the signature of the USPTO Director. Beginning on the effective date of this final rule, the USPTO will issue patents electronically under a new digital USPTO seal and bearing the digital signature from the USPTO Director. The patents will be available to applicants and the public via Patent Center upon patent issuance. In Patent Center, a patentee and the public will be able to view and print the patent, including the cover sheet, front page, drawings, specification, and claims.

In order to implement electronic patent issuance, the USPTO is removing and reserving 37 CFR 1.315, which states that “[t]he patent will be delivered or mailed upon issuance to the correspondence address of record.” Because patents will be issued electronically rather than on paper, the USPTO will no longer physically deliver the patent grant by mailing it to the

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<sup>1</sup> References to Patent Center herein refer to Patent Center and any updated document viewing systems that may replace Patent Center in the future.

correspondence address. Instead, the USPTO will issue the patent electronically via Patent Center.<sup>2</sup>

On August 1, 2022, the USPTO replaced the legacy Public Patent Application Information Retrieval tool (Public PAIR) with Patent Center for electronic filing and management of patent applications. Patent Center has a private view and a public view. The public view provides any member of the public access to a display of the information contained in applications that have been patented, published, or otherwise made available pursuant to 37 CFR 1.14. The public view does not provide public access to non-patent literature or information concerning applications that are maintained in confidence under 35 U.S.C. 122(a). In private view, an authorized registered user may access a display of the information contained in their application, regardless of whether it is being maintained in confidence under 35 U.S.C. 122(a) or has been published under 35 U.S.C. 122(b). To access the private view of Patent Center, the registered user must sign in using a two-step authentication process for secure communication with the USPTO. For further information, contact the Customer Support Center of the EBC via the methods described above in the information contact section.

In continuing its efforts to streamline service delivery processes, the USPTO is implementing electronic patent issuance and providing access to patents in Patent Center.

*I. Previous Paper Patent Issuance Process:* Under the previous patent issuance process, electronic capture of the information needed to issue a patent began shortly after mailing the notice of allowance. Generally, an Issue Notification is mailed several weeks prior to the issue date to inform the applicant of the patent number and issue date. The Issue Notification is also available electronically in Patent Center. The paper patent (including its cover sheet) was then prepared and mailed to the patentee. On the issue date, the USPTO's Official Gazette publication

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<sup>2</sup> Since Patent Center will fully replace Private PAIR in the future, the issued patent will not be available in Private PAIR.

included the patent number, title of the patent, names and residences of the inventors, the applicant, the assignee (if applicable), the filing and priority dates, the text of the first claim of the patent, the total number of claims in the patent, and the representative figure (if applicable). Upon issuance of a paper patent, a copy of the patent (without its cover sheet) was available for viewing and printing by the public on the USPTO's website at [www.uspto.gov/patents/search](http://www.uspto.gov/patents/search).

*II. Electronic Patent Issuance Process:* Electronic patent publication will result in electronic patent issuance under the USPTO seal including the Director's digital signature shortly after the patent number and issue date are assigned, which will result in the reduction of pendency for allowed patent applications. Applicants and the public will benefit from having access to the patent at an earlier time. Patentees will be able to view and print their electronically issued patents (including their cover sheets) through Patent Center, rather than waiting for their paper patent to arrive by mail. The USPTO will make electronic patent grants available in both the public and private views of Patent Center on the issue date. Therefore, the public will also be able to view the official electronic patent grant (including its cover sheet).

Additionally, the USPTO will continue to print the detailed patent information in the Official Gazette and make the patent available at [www.uspto.gov/patents/search](http://www.uspto.gov/patents/search) on the issue date.

Patentees may exercise the legal rights granted by the patent without physical possession of the patent because the patent right exists independently of the physical possession of the patent. *See* Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan, 69 FR 56481, 56521 (Sept. 21, 2004); 1287 Off. Gaz. Pat. Office 67, 98 (Oct. 12, 2004). Furthermore, patentees, who want a copy of the electronically issued patent, will be able to access patent grants through Patent Center and print the patent at no additional charge.

The USPTO will issue the patent shortly after the payment of the issue fee. As a result, applicants will have less time, after the payment of the issue fee, to file continuing applications, Quick Path Information Disclosure Statements, or petitions under 37 CFR 1.313(c) to withdraw an application from issue. Therefore, the best practice would be for applicants to file these submissions as early as possible. Preferably, continuing applications should be filed before the payment of the issue fee. *See* Manual of Patent Examining Procedure (9th ed. Rev. 10.2019) (MPEP) sec. 211.01(b)(I).

Patents will be issued on a Tuesday shortly after the patent number is assigned. Issue Notifications will be available electronically via Patent Center after the payment of the issue fee, usually on the Wednesday or Thursday before the patent issues. For those applicants who participate in the e-Office action program, the USPTO emails notification of the Issue Notification to the applicant's designated email address. For more information regarding the e-Office action program, *see* Electronic Office Action, 1342 Off. Gaz. Pat. Office 45 (June 2, 2009). For those who do not participate in the e-Office action program, the USPTO foresees the possibility that a patent may issue electronically before the applicant receives a mailed Issue Notification. The USPTO encourages applicants to use the e-Office action program to avoid this possibility. Alternatively, once an issue fee has been paid, the application should be diligently monitored for assignment of a patent number and issue date.

*III. Electronic Patent Grant May Be Viewed and Printed Via Patent Center:* The USPTO will upload the patent (including its cover sheet) electronically, thereby making the patent available to the patentee and the public through Patent Center. Patentees and the public will be able to print an unlimited number of copies of the electronically issued patent (including its cover sheet in color and any color drawings) at no charge through Patent Center on or after the issue date of the patent. Additionally, the electronically issued patent will provide the patentee greater control and flexibility in printing their issued patent.

*IV. Cover Sheet of Electronic Patent Grant:* The electronic patent grant cover sheet will be nearly identical in appearance to the cover sheets currently used for paper patents, except that the seal and Director's signature will be in digital form. Importantly, the digital seal and electronic signature of the Director on the electronic patent grant cover sheet will be in conformance with 35 U.S.C. 153, which requires that patents be issued "under the seal of the Patent and Trademark Office, and shall be signed by the Director or have [her or] his signature placed thereon and shall be recorded in the Patent and Trademark Office." The new seal will not simply be an electronic image, but rather an official USPTO seal in digital form that serves to authenticate the patent, in conformance with 35 U.S.C. 2(b)(1). An encrypted digital signature that may be used to validate the electronic patent document as the issued patent will be embedded within the seal.

*V. Elimination of Advance Copies:* Under electronic patent issuance, the USPTO will no longer accept orders for Advance copies of issued patents. Advance copies were unbound and unsealed and printed on regular 8.5" by 11" copy paper. The USPTO typically received 100 - 200 orders per week for Advance copies when patents were issued on paper. As previously mentioned, any electronically issued patent, including its cover sheet, may be printed directly through Patent Center, making the option for ordering Advance copies obsolete. Accordingly, the Issue Fee Transmittal form, PTOL-85B, will be revised to eliminate the option for ordering Advance copies of patents.

#### *VI. Transition Period*

Once the USPTO begins issuing patents electronically via Patent Center, it will, concurrently during a transition period, and in addition to the electronic patent grant, mail a ceremonial paper copy (see Section VII) of the issued patent to the correspondence address of record, free-of-charge. The ceremonial paper copy will be mailed shortly after the patent is issued. During and after this transition period, the electronic patent grant is the official patent

grant under 35 U.S.C. 153. The ceremonial paper copy is provided as a courtesy. No requests for additional ceremonial paper copies will be entertained during this transition period, though presentation copies will continue to be available for a fee. A presentation copy is a certified copy of the first page of an issued patent, and has a unique certification statement with a special ribbon and seal, and is suitable for framing and display.

The duration of the transition period is not determined, but the public will be provided prior notice of when the transition period ends. After the transition period, the USPTO will offer the presentation copy, certified copy, and ceremonial copy, each for a nominal fee.

### *VII. Ceremonial Paper Copy*

The USPTO will provide patentees a ceremonial paper copy of the patent during the transition period, free of charge. The ceremonial paper copy will be a copy of the electronically issued patent reminiscent of the paper patents, bound with a cover sheet with both an embossed seal and the signature of the USPTO Director. The ceremonial paper copy will indicate that this is a ceremonial copy of a patent that was officially issued in electronic form. As explained above, the ceremonial paper copy will be provided free-of-charge during the transition period as a temporary courtesy.

In addition to the ceremonial paper copy, the USPTO will still offer certified copies in accordance with 37 CFR 1.13 as well as presentation copies. The certified copies and presentation copies may be ordered for a fee. As explained above, the presentation copy is a certified copy of the first page of an issued patent, and has a unique certification statement with a special ribbon and seal, and is suitable for framing and display. For further information, visit the USPTO Certified Copy Center webpage at <https://certifiedcopycenter.uspto.gov/>.

The ceremonial paper copy will be available for purchase for a nominal fee after the transition period, in addition to the presentation copy and certified copy. Further information on

how the ceremonial copy can be requested after the transition period ends and the corresponding fee will be provided at a future time.

## **Comments and Responses**

The USPTO published proposed changes to the rules of practice to implement electronic patent issuance. *See* Electronic Patent Issuance, 86 FR 71209 (2021). In response to the notice of proposed rulemaking, the USPTO received twenty-one comments from a diverse group of stakeholders. The USPTO received two comments from intellectual property (IP) organizations, two from law firms, thirteen from individuals, and four anonymously. Overall, most of the comments were supportive of implementing electronic patent issuance, but included specific suggestions and questions. The comments and the USPTO's responses thereto follow:

### *Opposition*

**Comment 1:** Some comments argue that the USPTO should not implement electronic patent issuance. The comments state that the paper bound copy has sentimental value for small companies and independent inventors that an electronic document from the Internet would not provide. Several comments had the opposing view and support the USPTO's implementation of electronic patent issuance pointing to the cost and time savings for the USPTO and applicants and the potential positive environmental impact.

**Response:** The USPTO believes electronic patent issuance will provide various benefits for the USPTO as well as stakeholders. For example, electronic patent issuance should reduce pendency of patent applications and permit granted patents to be viewable and printable by both the applicant as well as the public in Patent Center at an earlier time. While the USPTO appreciates the concerns raised by the comments opposing electronic patent issuance, the USPTO believes the ceremonial paper copy of the electronic grant offered as a courtesy during the transition period, and the presentation copy, certified copy, and ceremonial copy that will



continue to be available for nominal fees after the transition period, will alleviate many of the issues raised. The ceremonial copy provides customers a patent copy that resembles the previous paper patents to bestow upon applicants a symbolic recognition of their achievement.

**Comment 2:** Some comments suggest providing applicants the option to have the patent issue electronically or to issue physically in paper.

**Response:** It would be against the public interest to issue patents in multiple formats. Historically, the USPTO has only issued patents in a single format, as paper patents. The USPTO would incur significantly more costs to have two different procedures for issuing patents in electronic and physical formats and the increased costs would be passed to patent applicants. In addition, the option would increase patent pendency for applications issued as paper patents compared to the electronic patents.

#### *Paper Copy*

**Comment 3:** Multiple comments requested that the USPTO provide the applicant the option for a bound paper copy of the patent grant. Some comments pointed out that the symbolic nature of the paper patent grant today is very special for many applicants and inventors, especially individual inventors and small companies. One comment remarked that the bound printed patent is a powerful tool in negotiation and potential litigation with competitors.

**Response:** The USPTO will provide patentees a ceremonial paper copy of the issued patent during the transition period as a courtesy, free of charge. The ceremonial paper copy resembles the paper patent that the USPTO traditionally provided to patent applicants as the issued patent. The ceremonial paper copy will be bound with a cover sheet with both an embossed seal and the signature of the USPTO Director. Further, the patentee will still be able to order presentation copies and certified copies of the patent for a fee. As described above, a presentation copy is a certified copy of the first page of an issued patent, and has a unique

certification statement with a special ribbon and seal, and is suitable for framing and display. The ceremonial paper copy will be available for purchase for a nominal fee after the transition period, in addition to the presentation copy and certified copy.

**Comment 4:** Some comments noted that the current presentation and certified copies do not provide the same sentimental value that a bound paper grant provides. Therefore, the current presentation and certified copies are not a meaningful substitute for the bound paper grant.

**Response:** During the transition period, a ceremonial paper copy will be provided as a courtesy, free of charge. The ceremonial paper copy will be available for purchase for a nominal fee after the transition period, in addition to the presentation copy and certified copy. The ceremonial paper copy will resemble the paper patents that are being replaced by electronic patent grants and contain features not available in the presentation and certified copies. The ceremonial paper copy will be bound with a cover sheet that has both an embossed seal and the signature of the USPTO Director. Accordingly, the USPTO believes that offering the ceremonial copy, in addition to the presentation and certified copies, will meet our stakeholders' diverse needs.

**Comment 5:** Some comments suggest an applicant could “opt in” or “opt out” of additionally receiving a printed bound paper grant by checking a box on the Issue Fee Transmittal.

**Response:** During the transition period, the USPTO will provide a ceremonial paper copy of the patent to all patentees as a courtesy, free of charge. The ceremonial paper copy will be available for purchase for a nominal fee after the transition period, in addition to the presentation copy and certified copy. After the transition period, the USPTO will provide guidance on how paper copies can be requested.

**Comment 6:** One comment suggests that the bound paper copy of the patent is needed in certain foreign countries to prove they have a patent.

**Response:** The comment has not specifically identified any particular country that requires the paper patent to show proof of patenting, and the USPTO is not aware of any country with such a requirement. Certified copies of the patent grant may be ordered from the Certified Copy Center.

**Comment 7:** One comment requested that when the applicant chooses to receive a bound paper copy of the patent, the USPTO permit the applicant to specify a “Paper Patent Address” where the bound paper copy would be sent. This would reduce time and costs for law firms that act as the correspondence address from having to receive and re-mail the bound paper copy.

**Response:** According to 37 CFR 1.33(a), all USPTO correspondence, including the paper patent grants, are directed to the correspondence address of record. The USPTO will continue this practice for mailing the ceremonial paper copies during the transition period.

#### *Fees*

**Comment 8:** Several comments suggested the USPTO charge a fee for a bound paper copy of the patent grant. Alternatively, some comments suggested that due to the cost savings of implementing electronic patent issuance the bound paper copy should be offered free of charge or subject to small and micro entity discounts.

**Response:** During the transition period, the USPTO will not charge a fee for the ceremonial paper copy. The ceremonial paper copy will be available for purchase for a nominal fee after the transition period, in addition to the presentation copy and certified copy.

**Comment 9:** Several comments requested the USPTO reduce the issue fee payment to account for the cost savings of no longer printing the bound paper grant. Some comments

suggest a tiered issue fee structure where applicants who choose not to receive a bound paper copy will pay a lower issue fee.

**Response:** Section 10 of the America Invents Act, Public Law 112-29, 125 Stat. 284, as amended by Public Law 115-273, 132 Stat. 4158 (the SUCCESS Act) prescribes that fees may be set or adjusted only to recover the aggregate estimated costs for the USPTO for processing, activities, services, and materials relating to patents, including administrative costs of the USPTO with respect to such patent fees. Therefore, fees charged by the USPTO, including the issue fee, are not itemized to recover the specific cost for which they are charged. Instead, they are designed such that the fees in total recover the aggregate costs. The USPTO will continue to ensure compliance with the SUCCESS Act.

#### *Continuation Practice*

**Comment 10:** Some comments argue the time between the Issue Notification and patent issuance should not be shortened because it leaves too little time to determine a continuation filing strategy. The comments make several additional arguments including: the additional two weeks of pendency is minor given the entire length of prosecution, the shortened period will cause more applicants to file continuing applications with dummy claims, small businesses and independent inventors do not commonly make the decision to file a continuing application until after the Issue Notification, the change will result in some entities not pursuing continuing applications, increases the stress on legal support staff, and may cause unintended issues with foreign applicants who may not be able to comply with the truncated timeline. In contrast, some comments state that the shortened time period to file a continuing application is a minor burden and applicants will quickly adjust to the new timeline.

**Response:** The USPTO is under a statutory obligation to issue patents as timely as possible. See 35 U.S.C. 154. Therefore, the USPTO is taking steps to reduce the pendency of applications, as warranted. In implementing electronic patent issuance, the USPTO is able to

reduce the time to issuance. Delaying issuance to counteract this time savings because applicant may possibly choose to file a continuing application is not in accordance with the statutory directive. The USPTO appreciates this may cause a change in some applicant's practice, but agrees with the comments that state that applicants will adapt to the new timeline. Applicants should file their continuing applications as early as possible, preferably prior to payment of the issue fee to avoid any loss of rights.

**Comment 11:** One comment asks whether the copendency requirements of MPEP 211.01(b) will still be valid such that the later-filed application may claim benefit to a prior filed nonprovisional application on the date of electronic patent issuance of the prior filed application. The comment goes on to also ask if there will be a time associated with the electronic patent issuance and will this publication time affect the "1 year or less" and "before" exceptions under 35 U.S.C. 102 now that the exact time of filing and publication times would be known.

**Response:** In order to claim the benefit of an earlier filed application in the United States, the continuing application must be filed "before the patenting or abandonment or termination of proceedings on the first application." 35 U.S.C. 120. This requirement has been interpreted such that the continuing application is copending if it is filed on the same date or before the date the earlier filed application issues as a patent. See *Immersion Corp. v. HTC Corp.*, 826 F.3d 1357, 1359, 119 USPQ2d 1083, 1084 (Fed Cir. 2016). The USPTO is not making any changes that would impact this statutory construction. Additionally, the electronic patent grant will include an issue date, but it will not include an issue time. Therefore, there will be no impact on 35 U.S.C. 120.

**Comment 12:** One comment requests the USPTO create a fixed and definite time period a patent will issue after payment of issue fee. The comment also asks the USPTO to address what happens when a patent electronically issues on a holiday or weekend for purposes of pendency with respect to filing continuing applications.

**Response:** There are numerous factors that impact the issue date of a patent (e.g. data capture processing, post allowance amendments, timing of issue fee payment, etc.). Therefore, it is difficult for the USPTO to create a fixed time for issuance. Consistent with current practice, applicants will be provided the projected issuance date on the Issue Notification. The USPTO encourages applicants to use the e-Office action program to ensure receipt of the Issue Notification prior to issuance of the patent. Patents will continue to issue weekly on Tuesdays, therefore, there will be no changes for purposes of filing continuing applications.

#### *Electronic Document Issuance*

**Comment 13:** Some comments request the USPTO electronically issue certificates of correction similar to patent grants. Another comment asks how certificates of correction will be issued. Other comments suggest the USPTO extend the electronic issuance to other post-issuance patent documents including reexamination certificates.

**Response:** At this time, certificates of correction will continue to issue by mailing the certificate of correction to the correspondence address of record. However, the USPTO is making efforts to also issue certificates of corrections electronically via Patent Center with the electronic patent grant. The USPTO will provide public notice before these certificates are issued electronically. As for post-issuance patent documents, the USPTO will continue to explore the feasibility of providing these documents electronically as well.

**Comment 14:** Some comments ask the USPTO to make certified copies of U.S. applications as filed available electronically in Patent Center rather than providing such requested certified copies as paper copies or on CD-ROM.

**Response:** The USPTO has no plans to make certified copies available electronically beyond the current practice of using CD-ROM media. The USPTO may consider this in the future as it continues to move to beginning-to-end electronic processing of patent applications.

## **Rulemaking Considerations**

### ***A. Administrative Procedure Act***

The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc 'ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates v. Sec'y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking were not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the USPTO chose to seek public comment before implementing the rule to benefit from the public’s input.

### ***B. Regulatory Flexibility Act***

For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The USPTO is amending the rules of practice to implement electronic publication, that is, issuing patents electronically through the USPTO’s Patent Center rather than mailing a copy of the patent to the correspondence address on record. Patentees would then be able to print a copy of the issued patent in its entirety, including the cover sheet that matches the color and design currently used for patent grants on paper, directly from Patent Center.

This change is procedural and is not expected to have a direct economic impact on small entities. The discontinuation of the paper patent grant is not expected to impact the ability of a patent owner to exercise their patent rights as a paper patent grant is not necessary to enforce or license a patent. Once issued, the paper patent grant is merely commemorative. Under electronic patent issuance, patent owners will be able to access their granted patent at any time. This includes the ability to print their own hard copy. Only when a patent owner would like the Office to print them a hard copy would any additional fee need to be paid (i.e., for a presentation copy or certified copy for submission to a legal proceeding). The additional fees for presentation and certified copies already exist today and would remain unchanged under this final rule. Therefore, for the reasons above, the changes in this final rule are not expected to negatively impact small entities.

***C. Executive Order 12866 (Regulatory Planning and Review)***

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

***D. Executive Order 13563 (Improving Regulation and Regulatory Review)***

The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, to the extent feasible and applicable, the USPTO has: (1) reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency's regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while



maintaining flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

***E. Executive Order 13132 (Federalism)***

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

***F. Executive Order 13175 (Tribal Consultation)***

This rulemaking will not (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

***G. Executive Order 13211 (Energy Effects)***

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

***H. Executive Order 12988 (Civil Justice Reform)***

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

***I. Executive Order 13045 (Protection of Children)***

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

***J. Executive Order 12630 (Taking of Private Property)***

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

***K. Congressional Review Act***

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

***L. Unfunded Mandates Reform Act of 1995***

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

***M. National Environmental Policy Act of 1969***

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 et seq.

***N. National Technology Transfer and Advancement Act of 1995***

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

### ***O. Paperwork Reduction Act of 1995***

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This rule does not involve an information collection requirement that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

### ***P. E-Government Act Compliance***

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble and under the authority contained in 35 U.S.C. 2, as amended, the USPTO amends 37 CFR part 1 as follows:

### **PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

#### **§ 1.315 [Removed and Reserved]**

2. Section 1.315 is removed and reserved.

**Katherine K. Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2023-03809 Filed: 2/27/2023 8:45 am; Publication Date: 2/28/2023]